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THE INITIATIVE AND REFERENDUM STATE LEGISLATION

CHAS. HOMER TALBOT

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HISTORY.

The "Initiative" and the "Referendum" are new terms for old institutions.

The *initiative* may be defined as the power the people reserve to themselves to propose ordinances and laws and amendments to their charters and constitutions, and to enact or reject the same at the polls. And the *referendum* may similarly be defined as the power the people reserve to themselves to approve or reject at the polls any ordinance or act passed by their legislative assemblies.

The initiative and referendum as applying to local and state legislation and state constitutional amendments have been widely adopted in the United States. The referendum has also been applied to federal laws and constitutional amendments, and the initiative to federal constitutional amendments, in Switzerland.

This bulletin confines itself almost exclusively to the state-wide initiative and referendum in the United States.

The forms of the referendum may be described as obligatory or optional in their operation upon the electorate, and as advisory or mandatory in their operation in the enactment of laws.

Under the obligatory referendum a law *must* be submitted to the people; and under the optional referendum

a law is submitted only upon petition by a certain number or percentage of the voters.

Under the mandatory referendum, the direct vote of the people is final and conclusive in the enactment of legislation. Under the advisory system, the voters can instruct their representatives by direct vote; but to make the system effective it is necessary to pledge representatives to obey the will of their constituents as expressed by referendum vote.

Public opinion laws merely secure the expression of public opinion upon questions of public policy.

Early uses of direct legislation

Local legislation.

The Swiss Landsgemeinde illustrates an early use of direct legislation in local affairs. The old New England town meeting, where measures were proposed and adopted or rejected at the will of the electors, affords another typical example of local direct legislation.

The state-wide initiative and referendum.

The state-wide referendum for the adoption of state constitutions is a familiar institution in the United States.

The first constitution submitted to a direct vote of the people was that proposed by the General Court of Massachusetts in 1778.

At the present time Delaware is the only state in the Union in which a referendum is not required for the adoption of constitutional amendments.

The right to instruct.

The right to instruct representatives was commonly exercised in the early constitutional history of this country.

The constitution of Massachusetts, adopted in 1780, expressly asserts the right of the people "to give instructions to their representatives." (Part the First, art XIX.) In 1783 the instructions from Boston ran: "It is our unalienable right to communicate to you our sentiments; and when we shall judge it necessary or convenient, to give you instructions on any special matter, and we expect you will hold yourselves at all times bound to attend to and observe them."

For other instances of the express reservation of the right to instruct, see the Const. of Pa., 1776, art. XVI. (Thorpe, American Charters, Constitutions, etc., vol. 5, p. 3084); the Const. of N. C., 1776, art. XVIII. (id., vol. 5, p. 2788); and the Const. of N. H., 1784, art. XXXII. (id., vol. 4, p. 2457).

The reference of acts by legislatures.

After the adoption of written constitutions, a number of judicial decisions were handed down which held that the reference of an act to a vote of the people of a state was a delegation of legislative power and therefore unconstitutional.

For early decisions putting forth the above doctrine, see the following cases directly in point: Rice v. Foster, 4 Harring. (Del.) 479 (1847); Thorne v. Cramer, 15 Barb. 112 (1851); Bradley v. Baxter, 15 Barb. 122 (1853); and Barto v. Himrod, 8 N. Y. 483 (1853); and Santo v. State, 2 Ia. 165 (1855). See also *dicta* in the following cases; Parker v Commonwealth, 6 Pa. St. 507 (1847); State v. Copeland, 3 R. I. 33 (1854); Stein v. Mayor, 24 Ala. 591 (1854); State v. Swisher, 17 Tex., 441 (1856); State ex rel. Dome v. Wilcox, 45 Mo. 458 (1870); and State ex rel. Sandford v. Court of Common Pleas, 36 N. J. Law, 72 (1872).

For the contrary doctrine, and sustaining of such acts, see Johnson v. Rich, 9 Barb. 680 (1851); State v. Parker, 26 Vt. 357 (1854), and Smith v. Janesville, 26 Wis. 291 (1870), cases directly in point. Also *dicta* in Wales v. Belcher, 20 Mass. 508 (1827); People v. Reynolds, 5 Gilman (Ill.) 1 (1848); L. & N. R. Co. v. County Court, 33 Tenn. 637 (1854); State v. Noyes, 30 N. H. 279 (1855); Bull v. Read, 54 Va. (13 Grat.) 78 (1855); Manly v. Raleigh, 57 N. C. 370 (1859); Alcorn v. Hamer, 38 Miss. 652 (1860), and Locke's Appeal, 72 Pa. St. 491 (1873).

The following are leading cases on the two sides:

Holding state-wide reference of an act to the people unconstitutional: Rice v. Foster, Thorne v. Cramer, Bradley v. Baxter, Barto v. Himrod, and Santo v. State, all cited above; State v. Hayes, 61 N. H. 264 (1881); and opinions of the Justices, 160 Mass. 586 (1894). Also indicating such reference to be unconstitutional in *dicta*: Parker v. Commonwealth, State v. Copeland, State ex rel. Dome v. Wilcox, and State ex rel. Sandford v. Court of Common Pleas, all cited above; and Wright v. Cunningham, 115 Tenn. 445 (1905).

Holding state-wide reference of an act to be constitutional and valid: Johnson v. Rich, State v. Parker, Smith v. Janesville all cited above, and State ex rel. Van Alstine v. Frear, 142 Wis. 320 (1910). Also indicating such reference to be constitutional in *dicta*: Wales v. Belcher, People v. Reynolds, L. & N. R. R. Co. v. County Court, Bull v. Read, Manly v. Raleigh, Alcorn v. Hamer, and Locke's Appeal, all cited above; Fell v State, 42 Md. 71 (1875); Clarke v. Rogers, 81 Ky. 43 (1883); and Rutter v. Sullivan, 25 W. Va. 427 (1885).

The present status of the question is as follows:

Holding it unconstitutional: Del., Ia., Mass., N. H., N. Y.,
Holding it constitutional: Vt., Wis.
Not adjudicated, but with dicta indicating such reference to be unconstitutional: Md., N. J., Tenn., Tex., Utah, Wash.
Not adjudicated, but with dicta indicating it constitutional and valid: Ala., Ark., Cal., Ga., Ill., Kan., Minn., Miss., N. C., Pa., R. I., S. C., W. Va.,
Reference prohibited by express constitutional provision: Ind., and Ky. (except in certain specified cases).
Reference expressly permitted by constitutional provision: Ariz., Ark., Colo., Me., Mich., Mo., Mont., Okla., Ore., Wash.

Special constitutional provisions

The adoption of constitutional provisions which expressly require the reference to a vote of the people of legislative acts on specified questions, is the next step in the history of direct legislation in the United States.

Provisions for the obligatory state-wide referendum

on special questions are found quite generally in our state constitutions. They cover a variety of questions including suffrage, state boundaries and annexations of territory, the location of the seat of government and of state institutions, apportionment, the incurring of state indebtedness, the loaning of the state credit, banks and banking, state aid to railways, taxation, appropriations, sale of school lands, and provisions for education.

For typical illustrations of the obligatory referendum compare the following constitutional provisions.

Suffrage. Colo. Const. 1876, art. 7, sec. 2; N. D. Const., 1889, art. 5, sec. 122; S. D. Const. 1889, art. 7, sec. 2; Wis., Const. 1848, art. 3, sec. 1.

State boundaries and annexations of territory. W. Va. Const. 1872, art. 6, sec. 11.

Location of seat of government. Colo. Const. 1876, art. 8, sec. 2; Kan. Const. 1859, art. 15, sec. 8; Mont. Const. 1889, art. 10, sec. 2; Ore. Const. 1857, art. 14, sec. 1; Pa. Const. 1873, art. 3, sec. 28; S. D. Const. 1889, art. 20; Wash. Const. 1889, art. 14, sec. 1.

Location of state institutions. Tex. Const. 1876, art. 7, secs. 10 and 14; Wyo. Const. 1889, art. 7, sec. 23.

Apportionment. W. Va. Const. 1872, art. 6, sec. 50.

Public Credit. Cal. Const. 1879, art. 16; Colo. Const. 1876, art. 11, sec. 5; Idaho Const. 1889, art. 8, sec. 1; Ill. Const. 1870, art. 4, sec. 18, Ia. Const. 1857, art. 7, sec. 5; Kan. Const. 1859, art. 11, sec. 6; Ky. Const. 1891, sec. 50; Mo. Const. 1875, art. 6, sec. 44; Mont. Const. 1889, art. 13, sec. 2; N. J. Const. 1844, art. 4, sec. 6; N. Y. Const. 1894, art. 7, sec. 4; R. I. Const. 1842, art. 4, sec. 13; S. C. Const. 1895, art. 10, sec. 11; Wash. Const. 1889, art. 8, sec. 3; Wyo. Const. 1889, art. 16, sec. 2.

Banks and Banking. Ill. Const. 1870, art. 11, sec. 5; Ia. Const. 1857, art. 8, sec. 5; Kan. Const. 1859, art. 13, sec. 8; Mo. Const. 1875, art. 12, sec. 26; and Wis. Const. 1848, art. 11, sec. 5. Wisconsin provided for a double referendum, first, to determine whether a law should be submitted, and then by a second referendum, whether the law submitted should be adopted. (Changed by amendment of 1902.)

State aid to railways. Minn. Const. (Amend. 1860) art. 9, sec. 2.

Taxation, Colo. Const. 1876, art. 10, sec. 11; Idaho Const. 1889, art. 7, sec. 9; Ill. Const. 1870, art. 4, sec. 33; Mont. Const. 1889, art. 12, sec. 9; Utah Const. 1895, art. 13, sec. 7.

Appropriations for public buildings. Colo. Const. 1876, art. 11, sec. 3–5; Ill. Const., 1870, art. 4, sec. 33.

Sale of school lands. Kans. Const. 1876, art. 6, sec. 5.

Provisions for education. Tex. Const., 1876, art. 7, secs. 10 and 14.

Recent constitutional amendments

Within recent years a number of states have adopted constitutional provisions establishing the initiative and referendum for general state legislation. The amendments provide for the optional initiative and referendum whereas the referendum on special state questions provided in the older constitutional provisions was obligatory.

For the recent constitutional provisions for state direct legislation, see S. D. Const. (Amend. 1898) art. 3, sec. 1; Utah Const. (Amend. 1900) art. 6, secs. 1 and 22; Ore. Const. (Amend. 1902) art. 4, sec. 1; Nev. Const. (Amends. 1904 and 1912) art. 19, secs. 1, 2 and 3; Mont. Const. (Amend. 1906) art. 5, sec. 1; Okla. Const. 1907, art 5, secs. 1–4, 6–8, and art. 24, sec. 3; Me. Const. (Amend. 1908) art. 4, part 1, sec. 1; id., part 3, sec. 1, and secs. 16–22; Mo. Const. (Amend. 1908) art. 4, sec. 57; Ark. Const. (Amend. 1910) art. 5, sec. 1; Colo. Const. (Amend. 1910) art. 5, sec. 1; Calif. Const. (Amend 1911) art. 4, sec. 1; Ariz. Const. 1912, art. 4, sec. 1; New Mexico Const. 1912, art. 4, sec. 1 (provides referendum only); Ohio Const. (Amend. 1912) art. 2, secs. 1–1g; Idaho Const. (Amend. 1912) art 3, sec. 1; Neb. Const. (Amend. 1912) art. 3, secs. 1 and 10; Wash. Const. (Amend. 1912) art. 2, sec. 1.

For proposed constitutional amendments see N. D., Session Laws, 1911, chs. 86, 89, 93, 94; and Wis., Laws, 1911, pp. 1142–5.

Advisory systems.

The difficulty of securing constitutional amendments for the initiative and referendum has led in a few in-

stances to the adoption of public opinion and party advisory system laws for the securing of at least partial systems of state direct legislation.

Public opinion laws. A public opinion system was enacted in Illinois in 1901. The electors of that state have voted upon a number of legislative questions; but as the candidates for the legislature have not been pledged to obey the wishes of their constituents, these expressions of opinion have not been effective in securing the legislation desired.

See Ill. Rev. Stats. 1906, ch. 46, secs. 428, 429, p. 967 (Ill. Laws, 1901, p. 198).

The advisory system within parties. The advisory system within the parties at primary elections was adopted in Texas in 1905.

See Tex. Laws, 1905, First called session, ch. 11, sec. 140.

VALIDITY OF THE INITIATIVE AND REFERENDUM.

The validity of state constitutional provisions reserving to the people the right of the initiative and referendum is firmly established.

The clause in the Federal Constitution which was used as the basis of attack upon such reserved powers was article 4, section 4: "The United States shall guarantee to every state in this Union a republican form of government. . . ."

I. (a) In this connection, the Supreme Court of the United States, in the case of Pacific States Telephone and Telegraph Co. v. Oregon, 32 Sup. Ct. Rep., p. 224 (Feb. 19, 1912), in which the constitutionality of the initiative and referendum was assailed, held that the question as to when a state had ceased to be republican in form, and the enforcement of the above guaranty, was "not cognizable by the judicial power, but solely committed by the Constitution to the judgment of Congress" (p. 224.)

Said Mr. Chief Justice White, in delivering the opinion in the case, "that question has long since been determined by this court" (p. 224). Re-affirming the doctrine expounded in "the leading and absolutely controlling case" of Luther v. Borden, 7 How. (48 U. S.) p. 1, (1849), the court held that

"the fundamental doctrines so lucidly and cogently announced by the court" in that case "have never been doubted or questioned since" (p. 230); and the court further cited, and quoted at length from Taylor v. Beckham, 178 U. S. 548 (1900), in which the principles set forth in Luther v. Borden were reiterated and re-affirmed.

In citing Luther v. Borden, the Chief Justice quotes from the opinion in that case:

"'When the senators and representatives of a state are admitted into the councils of the union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal.'" (p. 230).

(b) It is a matter of public record that senators and representatives from South Dakota, Utah, Oregon, Montana, Oklahoma, Maine, Missouri, Arkansas, Colorado, California and Arizona (states all having the initiative and referendum) have been, and are, "admitted into the councils of the Union".

II. (a) Again, it was held by the U. S. Supreme Court, speaking through Mr. Chief Justice Waite, in the case of Minor v. Happersett, 21 Wall. (88 U. S.) 162 (Oct. Term. 1874), that

(b) "All the states had governments when the Constitution was adopted. . . . These governments were accepted exactly as they were, and it is, therefore, to be presumed that they were such as it was the duty of the states to provide. Thus we have unmistakenable evidence of what was republican in form, within the meaning of that term as employed in the Constitution", and

(c) In the Constitution of Georgia of 1777 (Art. LXIII), (in force as the organic law of that state at the time of the adoption of the federal constitution), the

initiative power to amend the state constitution was expressly provided. (See page——, above).

III "The initiative and referendum amendment does not abolish or destroy the republican form of government, or substitute another in its place . . . The people have simply reserved to themselves a larger share of legislative power." Kadderly v. Portland, 44 Ore. 118 (1903), re-affirmed in State v. Pacific States Telephone and Telegraph Co., 53 Ore. 162 (1909) and followed in Ex parte Wagner, 21 Okla. 33 (1908).

See also, Kiernan v. Portland, 57 Or. 454 (1910), in which the court said, "Any government in which the supreme power resides with the people is republican in form. It is difficult to conceive of any system of lawmaking coming nearer to the great body of the people of the entire state, or by those comprising the various municipalities, than that now in use here, and, being so, we are at a loss to understand how the adoption and use of this system can be held a departure from a republican form of government . . . In proportion to their responsibility to those for whom they may be the public agents, and the nearer the power to enact laws and control public servants lies with the great body of the people, the more nearly does a government take unto itself the form of a republic—not in name alone, but in fact. From this it follows that each republic may differ in its political system or in the political machinery by which it moves, but, so long as the ultimate control of its officials and affairs of state remain in its citizens, it will in the eye of all republics, be recognized as a government of that class. . . . It seems inconceivable that a state,

merely because it may evolve a system by which its citizens become a branch of its legislative department, coordinate with their representatives in the Legislature, loses caste as a republic."

See also, State ex rel. Schrader v. Polley, 26 S. D. 5 14 S. D. 394 (1901), upholding the constitutionality of the South Dakota initiative and referendum amendment. See, also, State ex rel. Schrader v. Polley, 26 S. D. 5 (1910).

For additional decisions on direct legislation, see Hopkins v. Duluth, 81 Minn. 189 (1900); In re Pfahler, 150 Calif. 71 (1906); Eckerson v. Des Moines, 137 Ia. 452, 482 (1908); Hartig v. Seattle, 53 Wash. 432, 435 (1909); Straw v. Harris, 54 Ore. 424, 430–1 (1909); and State ex rel. v. Roach, 230 Mo. 408 (1910). With reference to an opinion handed down by the Court of Criminal Appeals of Texas in Ex parte Farnsworth, 135 S. W. 535 (1911), in which the initiative and referendum was declared to be unconstitutional, see the following decisions of the Supreme Court of Texas upholding the constitutionality of these measures: Southwestern Telegraph and Telephone Co. v. City of Dallas, 134 S. W. 321 (1911), and Bonner v. Belsterling, 138 S. W. 571 (1911) affirming the judgment of the Court of Civil Appeals in this case, 137 S. W. 1154 (1911.)

The history of article 4, section 4 of the Federal constitution is given in Madison's Journal of the Constitutional Convention (Scott's Ed.), pages 63, 110, 148–9, 162, 380–2, 426–7, 444, 448, 449, 460, 462, 639–40, 691, 699, 712, 720, 736, 761.

In discussing this guaranty clause, James Madison in the Federalist, No. 43, says—"The authority extends no further than to a guaranty of a republican form of government. * * * As long as the existing republican forms are continued by the states they are guaranteed by the Federal Constitution. Whenever the states may choose to substitute other republican forms, they have a right to do so, and to claim the Federal guaranty for the latter. *The only restriction imposed upon them is that they shall not exchange republican for anti-republican constitutions:* a restriction which it is presumed, will hardly be considered as a grievance."

Again, Alexander Hamilton expounding the same clause says (the Federalist, No. 21) "It could be no impediment to reforms of the State Constitutions by a majority of the people in a legal and peaceable mode. This right would remain undiminished. *The guarantee could only operate against changes to be effected by violence.*"

James Wilson, also a member of the Constitutional Convention, and later a Justice of the Supreme Court of the United States, in his speech of November 26th, 1787, in the Pennsylvania convention, advocating the adoption of the Federal Constitution by that state, in naming and defining the various forms of government concludes his enumeration with, "a republic or democracy, where the people at large retain the supreme power— and act *either collectively or by representation.*" (Works, vol. 1, p. 544.)

Thomas Jefferson in a letter to John Taylor, under date of May 28th, 1816, (Vol. 15, p. 19, Library Ed., Jefferson's Writings), says—"Governments are more or less republican, as they have more or less of the element of popular election *and control* in their composition."

See, in addition, Montesquieu, Spirit of Laws, vol. 1, book 3, chapters 1–4; Story on the Constitution, 4th Ed., vol 2, ch. 41, pp. 567–74; Cooley, Constitutional Limitations, 7th Ed., ch. 2, pp. 42–5. Compare also Lincoln's "government of the people, by the people, for the people." (Gettysburg Address).

The Federal Constitution of Switzerland, ch. 1, art. 6, requires the constitution of every canton (state) to "assure the exercise of political rights, *according to republican forms, representative or democratic.*"

Finally, note the proclamation of President Roosevelt in admitting Oklahoma as a state, Nov. 16, 1907, in which he says, "Whereas it appears that the said Constitution and government of the proposed state of Oklahoma *are republican in form,*" etc.; and see the admission with its initiative and referendum constitutional provisions of Arizona, in 1912.

LAWS AND JUDICIAL DECISIONS.[1]

Foreign countries.

Switzerland.[2] Fed. Const. 1874, art. 89. Federal laws, enactments, and resolutions are to be passed only by the agreement of the two councils. Federal laws must be submitted for acceptance or rejection by the people if the demand is made by 30,000 voters or by eight cantons. The same principle applies to federal resolutions which have a general application, and which are not of an urgent nature.

Art. 120. Whenever either council of the Federal Assembly resolves in favor of a complete revision of the federal consitution and the other council does not consent thereto, or when 50,000 Swiss voters demand a complete revision, the question whether the federal constitution ought to be revised must, in either case, be submitted to a referendum vote; and if the majority of those voting pronounce in the affirmative, there must be a new election of both councils for the purpose of undertaking the revision.

[1] The present study concerns itself only with the initiative and the referendum for general state legislation. Constitutional provisions for the obligatory referendum on special state questions and state legislation relating to the initiative and referendum in local affairs, are not considered.

[2] See United States, 57th Cong., 2nd sess., House of Rep. Doc. No. 1 (in serial no. 4440) p. 981–94, for an excellent account of the Swiss referendum and initiative, by Arthur S. Hardy, formerly U. S. minister to Switzerland. See also, the report to the Department of State by Leo J. Frankenthal, American vice-consul, Berne, Switzerland, May, 1908, on "The Initiative in Switzerland." (found in United States, 61st Cong., 1st sess., Senate Doc. No. 126).

Fed. Law, June 17, 1874. This law provides the procedure for referendums.

Fed. Const. (Amend. 1891) art. 121. Partial revision may be secured either through popular initiative or in the manner provided for the passage of federal laws. The initiative may be invoked by the petition of 50,000 voters asking for the enactment, the abolition, or the amendment of special articles of the federal constitution. When several different subjects are proposed for revision or adoption into the federal constitution by means of the initiative, each one of them must be demanded by a separate petition. Petitions may be presented in general terms or as a completed proposal of amendment. When a petition is presented in general terms and the Federal Assembly is in agreement therewith, it is the duty of that body to draw up a project of partial revision in accordance with the sense of the petitioners, and to submit it to the people and the cantons for acceptance or rejection. If the Federal Assembly is not in agreement with the petition, the question of revision must be submitted to the vote of the people, and if the majority of those voting express themselves in the affirmative, the Federal Assembly must proceed with the revision in conformity with the popular decision.

When a petition is presented in the form of a completed project of amendment, and the Federal Assembly is in agreement therewith, the project must be referred

to the people and the cantons for acceptance or rejection. In case the Federal Assembly is not in agreement with it, that body may prepare a measure of its own, or recommend the rejection of the proposed amendment, and it may submit its own counter-project or its recommendation for rejection at the same time that the initiative petition is submitted to the vote of the people and the cantons.

Art. 123. The amended federal constitution, or the revised portion thereof, is in force when it has been adopted by a majority of the citizens voting thereon, and by a majority of the cantons. In making up the majority of cantons the vote of a half-canton is counted as half a vote.

Fed. Law, published Feb. 10, 1892. This law provides the mode of procedure for the initiative.

The Cantons. All the cantons have the initiative and referendum upon constitutional amendments; and all except Fribourg, upon cantonal laws.

Great Britain. The question of introducing the referendum to settle disputes between the two houses has been discussed in the British Parliament.

See the Parliamentary Debates for June 24, 1907, pp. 911, 924–5.

The question was somewhat widely debated in the budgetary campaign of 1909–10. The adoption of a form of the referendum was advocated by the leaders of the Conservative party, in 1911.

Commonwealth of Australia. Const. 1900. This constitution was ratified by referendum vote taken in the separate colonies in Australia from 1899 to 1900. Under chapter 8, section 128, of the constitution, proposed

amendments must be submitted to a referendum vote. A double majority is required for ratification; namely, a majority of all the electors voting and also a majority vote in more than half of the states.

Norway. An interesting use of the referendum was made by the people of Norway in their separation from Sweden. A Resolve of the Storthing on July 28, 1905, provided for a referendum vote of the electors of the whole country to decide the question of the dissolution of the union. The referendum took place on August 13, 1905, and resulted in a practically unanimous vote for the disolution.

United States.

Arizona. Const. 1912, art. 4, part 1.

The initiative and referendum apply both to laws and constitutional amendments.

Legislative measures may be proposed by 10% of the qualified electors, and constitutional amendments by 15%.

A referendum may be ordered by the legislature, or by a petition signed by 5% of the qualified electors, upon any measure, or item, section or part of any measure, enacted by the legislature, except emergency measures. Emergency measures are such as are immediately necessary for the preservation or the public health, peace or safety, or for the support and maintenance of the departments of the state government and state institutions. Emergency measures require a two-thirds vote of the members elected to each house by the

legislature, on a roll call vote, and the approval of the governor. A three-fourths affirmative vote in each house is necessary to pass an emergency measure over the governor's veto.

Acts passed by the legislature, except emergency measures, do not become operative until 90 days after the close of the session of the legislature enacting them.

Initiative petitions must be filed with the secretary of state not less than four months preceding the date of the election at which the measures so proposed are to be voted upon.

Measures and constitutional amendments submitted to the people become law when approved by a majority of the votes cast thereon and upon the proclamation of the governor. The veto power of the governor does not extend measures approved by the vote of the people.

The total number of votes cast for all candidates for governor at the general election last preceding the filing of any initiative or referendum petition is the basis on which the number of qualified voters required to sign such petition is computed.

Petitions must contain the declaration of each petitioner that he is a qualified voter of the state, his post-office address, the street and number, if any, of his residence, and the date on which he signed the petition. Each sheet containing petitioners' signatures must be attached to a copy of the title and text of the measure so proposed to be initiated or referred to the people, and every sheet of every such petition containing signatures must be verified by the affidavit of the person who circulated the sheet or petition, setting forth that each of

the names were signed in the presence of the affiant and that in his belief each signer was a qualified voter of the state.

If two or more conflicting measures or amendments to the constitution are approved by the people at the same election, the measure or amendment receiving the greatest number of affirmative votes prevails in all particulars as to which there is conflict.

It is the duty of the secretary of state, in the presence of the governor and chief justice of the supreme court, to canvass the votes for and against measures and proposed constitutional amendments, within 30 days after the election. Upon the completion of the canvass the governor must issue his proclamation giving the vote cast, and declaring such measures or amendments as have received a majority of the votes cast thereon, to be law.

This section of the constitution is self-executing. It is made the duty of the legislature to provide a penalty for any wilful violation of this section.

Arkansas. Const. (Amend. 1910) art. 5, sec. 1. Acts of Ark., 1909, pp. 1238—1240. The initiative and referendum apply to both statutes and constitutional amendments. Emergency acts are excepted from the application of the referendum.

Initiative petitions must be signed by 8 per cent of the legal voters, must include the full text of the measure proposed and be filed with the secretary of state not less than four months before the election at which they are to be voted upon.

Referendum petitions must be signed by at least 5 per cent of the voters, and must be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The legislative assembly may order a referendum on any act. The veto power of the governor does not extend to measures referred to the people.

Any measure referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon.

The whole number of votes cast for governor at the regular election last preceding the filing of any petition for the initiative or referendum is the basis on which the number of legal votes necessary to sign such petition are to be counted.

Public Acts, 1911 pp. 582—93. This act provides for carrying into effect the initiative and referendum powers reserved by the people. It establishes the procedure for initiative and referendum petitions, and prescribes the form of such petitions. It provides that no law passed by the legislature shall be deemed necessary for the immediate preservation of the public peace, health or safety that does not pertain to the support and maintenance of the government, the state's charitable or educational institutions, deficiencies in former appropriations, the exercise of the police powers, the immediate relief of persons or communities in distress, or unless the purpose of such law must be immediately accomplished, if at all; and in no case unless such emergency is declared in the enactment of the law.

The act defines the eligibility of signers of initiative and referendum petitions, and provides penalties for the wrongful signing of petitions. It further prescribes the form of affidavit to be attached to petitions in verification of signatures; and for mandamus proceedings to compel the secretary of state to file petitions, if necessary, and for judicial determination of the sufficiency of petitions. The ballot titles of initiative measures are provided by the attorney general.

If two or more conflicting laws are approved by the people at the same election, the law receiving the greatest number of affirmative votes is paramount in all particulars as to which there is a conflict. Similarly, as to constitutional amendments.

The act contains provisions for the publishing for thirty days of copies of the titles and texts of measures submitted to the people, in one newspaper in each county; and for the counting, canvassing and returning of the votes cast upon such measures, and for the governor's proclamation giving the results, and declaring such measures as are approved by a majority of those voting thereon to be in full force and effect as the law of the state. If two or more measures approved at an election are known to conflict with each other, or to contain conflicting provisions, the governor must proclaim which is paramount in accordance with the provisions of this act.

California. Const. (Amend. 1911) art. 4, sec. 1, Statutes, 1911, pp. 1655—59. The initative and referendum apply both to laws and constitutional amendments.

Legislative measures and constitutional amendments may be proposed by initiative petitions signed by 8% of

all the votes cast for all candidates for governor at the last preceding general election, at which a governor was elected; and any measure or amendment so petitioned for and presented to the secretary of state shall be submitted to the voters at the next succeeding general election occurring subsequent to 90 days after the presentation of said petition, or at any special election called for the governor in his discretion prior to such general election.

Initiative petitions for laws signed by 5 per cent of the votes cast as above, may be filed with the secretary of state at any time not less than ten days before the commencement of any regular session of the legislature; and when any such initiative petition has been so filed, it must be transmitted to the legislature as soon as it convenes and organizes. The law so proposed must be either enacted or rejected without change or amendment by the legislature, within 40 days from the time it was received. If rejected, or if no action is taken upon it by the legislature within said 40 days, the secretary of state must submit it to the people for approval or rejection at the next general election.

The legislature may reject any measure so proposed by initiative petition and propose a different one on the same subject by a yea and nay vote upon a separate roll call, and in such event both measures must be submitted by the secretary of state to the voters. Initiative petitions must set forth the full text of the measure proposed.

The referendum may be invoked by a petition signed by 5 per cent of all the votes cast for all candidates for

governor at the last preceding general election at which a governor was elected. Referendum petitions must be filed with the secretary of state within 90 days after the final adjournment of the session of the legislature which passed the act. No act passed by the legislature goes into effect until 90 days after the final adjournment of the session, except those calling elections, providing for tax levies or appropriations for the usual current expenses of the state, and urgency measures necessary for the immediate preservation of the public peace, health or safety, passed by a two-thirds vote of the members elected to each house. No measure creating or abolishing any office or changing the salary, term, or duties of any officer or granting any franchise or special privilege, or creating any vested right or interest, shall be construed to be an urgency measure.

The referendum may be ordered upon any act or section or part of any act (except urgency measures, as above.) Acts referred to the people shall be voted upon at the next general election occurring at any time subsequent to 30 days after the filing of the petition, or at any special election called by the governor, in his discretion, prior to such regular election.

Any measure or constitutional amendment submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon, at any election, takes effect five days after the date of the official declaration of the vote by the secretary of state. No measure or constitutional amendment, initiated or adopted by the people, is subject to the veto power of the governor; and no

such measure or amendment to the constitution adopted by the people under the initiative provisions of this section, can be amended or repealed except by a vote of the electors, unless otherwise provided in said initiative measure. However, acts and laws adopted by the people under the referendum provisions may be amended by the legislature at any subsequent session thereof.

If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions receiving the highest affirmative vote prevails.

Provision is made that until otherwise provided by law, all measures submitted to the electors under the initiative and referendum powers, shall be printed, and together with arguments for and against each such measure by the proponents and opponents thereof, shall be mailed to each elector in the same manner as now provided by law as to amendments to the constitution, proposed by the legislature; and until otherwise provided by law, the persons to prepare and present such arguments shall be selected by the presiding officer of the senate.

Any initiative and referendum measure, proposed as provided, which for any reason is not submitted at the election specified in this section, is not thereby prevented from being submitted at a succeeding general election; and no law or constitutional amendment, proposed by the legislature, can be submitted at any election unless at the same election there be submitted all measures proposed by petition of the electors, if any be so proposed.

Any initiative or referendum petition may be presented in sections, but each section must contain a full and correct copy of the title and text of the proposed measure. Each signer must add to his signature his place of residence, giving the street and number if such exist. His election precinct must also appear on the paper after his name. Any qualified elector of the state shall be competent to solicit signatures within the county or city and county of which he is an elector. Each section of the petition must bear the name of the county or city and county in which it is circulated, and must have attached thereto the affidavit of the person soliciting signatures to the same, stating his own qualifications and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature is genuine. No other affidavit is required. The affidavit of any person soliciting signatures to petitions must be verified free of charge by any officer authorized to administer oaths. Such petitions so verified are prima facie evidence that the signatures thereon are genuine and that the persons signing the same are qualified electors. Unless and until it is otherwise proven upon official investigation, it is presumed that the petition presented contains the signatures of the requisite number of qualified electors.

Each section of the petition must be filed with the clerk or registrar of voters of the county or city and county in which it was circulated, but all said sections circulated in any county or city and county shall be

filed at the same time. Within 20 days after the filing of such petition in his office, the said clerk, or registrar of voters, must determine from the records of registration what number of qualified electors have signed the same, and if necessary the board of supervisors shall allow the clerk or registrar additional assistants for the purpose of examining such petition and provide for their compensation. The said clerk, or registrar, upon the completion of such examination, must forthwith attach to the petition, except the signatures thereto appended, his certificate properly dated, showing the result of the examination; and must forthwith transmit the petition and his certificate to the secretary of state and also file a copy of the certificate in his office. Within 40 days from the transmission of the petition and certificate by the clerk or registrar to the secretary of state, a supplemental petition identical with the original as to the body of the petition, but containing supplemental names, may be filed with the clerk or registrar of voters. Within 10 days after the filing of such supplemental petition, a like examination and certification as of the original petition shall be made.

When the secretary of state shall have received from one or more county clerks or registrars, of voters a petition properly certified as having been signed by the requisite number of qualified electors, he must forthwith transmit to the county clerk or registrar of voters of every county or city and county in the state his certificate showing such fact.

This amendment is self-executing but legislation may be enacted to facilitate its operation, but in no

way limiting or restricting either the provisions of this section or the powers herein reserved.

Colorado. Const. (Amend. 1910) art. 5, sec. 1. Session Laws, 1910, pp. 11—14. The initiative and referendum apply both to statutory laws and constitutional amendments.

Initiative petitions proposing laws or amendments to the constitution must be signed by at least 8% of the legal voters, and every such petition must include the full text of the measure so proposed. Petitions must be filed with the secretary of state at least four months before the election at which they are to be voted upon.

Referendum petitions signed by at least 5% of the legal voters, may be filed against any act, section or part of any act of the general assembly, except laws necessary for the immediate preservation of the public peace, health or safety, and appropriations for the support and maintenance of the department of state and state institutions. The referendum may also be ordered by the general assembly. Referendum petitions must be filed with the secretary of state not more than 90 days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section or part of any act does not delay the remainder of the act from becoming operative. The veto power of the governor does not extend to measures initiated by or referred to the people. All elections on measures referred to the people shall be held at the regular

biennial general election, and all such measures become law when approved by a majority of the votes cast thereon, and take effect from and after the date of the official declaration of the vote by proclamation of the governor, but not later than 30 days after the vote has been canvassed. The whole number of votes cast for secretary of state at the regular general election last preceding the filing of any initiative or referendum petition is made the basis on which the number of legal votes necessary to sign such petition are counted.

Initiative or referendum petitions shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state. The signatures must be those of qualified electors only, and each signature must be followed by the residence address and the date of signing. To each petition, which may consist of one or more sheets, must be attached the affidavit of some qualified elector, that each signature thereon is the signature of the person whose name it purports to be, and that to the best of the knowledge and belief of the affiant, each of the persons signing said petition was at the time of signing a qualified voter. Such petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it were qualified electors.

This section is self-executing.

Idaho. Const. (Amends. 1912.) art. 3. sec. 1. The referendum and initiative amendments are separate. The referendum power against any act or measure passed

by the legislature is reserved to the people, "under such conditions and in such manner as may be provided by acts of the legislature."

Similarly the power of the initiative as applying to statutory laws only, is reserved to the people. However, it is provided that legislation thus submitted shall require the approval of a number of votes equal to a majority of the total vote cast for the office of governor at such general election, to be adopted.

Neither of these amendments is self-existing. The provisions of both are quite similar to those of the Utah amendment adopted in 1900. The latter has not yet been put in force by the legislature.

Illinois. Rev. Stats., 1906, c. 46, secs. 428—9, p. 967. (Laws, 1901, p. 198.) Under this law the submission of any question for an expression of public opinion may be secured on a written petition signed by 10% of the registered voters of the state. The petition must be filed with the proper election officers not less than sixty days before the election at which the question is to be submitted. Not more than three propositions may be submitted at the same election, and they are to be submitted in the order of filing.

Maine. Const. (Amend. 1908) art. 4, part 1, secs. 1 and 16—22. Resolves, 1907, ch. 121, pp. 1476—81. This amendment applies to statutory but not to constitutional law. Certain specific exemptions are also made for statutory law.

Emergency bills are not subject to the referendum. Such bills may include measures immediately necessary

for the preservation of the public peace, health, or safety, but may not include (1) an infringement of the right of home rule for municipalities; (2) a franchise or license to a corporation or an individual, extending longer than one year; or (3) provision for the sale, or purchase, or renting for more than five years of real estate. The emergency, with the facts constituting the same, must be expressed in the preamble of the act. A two-thirds vote of all the members elected to each house is necessary to pass an emergency measure.

Initiative bills may propose any measure, including bills to amend or repeal emergency legislation, but not to amend the state constitution. The petition must set forth the full text of the measure proposed and be signed by not less than 12,000 electors, and be filed with the secretary of state or presented to either branch of the legislature at least 30 days before the close of its session. Proposed measures must be submitted to the legislature, and unless they are enacted without change, they must be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, in such a manner that the people can chose between the competing measures, or reject both. When there are competing bills and neither receives a majority of the votes given for and against both, the one receiving the greater number of votes is to be resubmitted by itself at the next general election, to be held not less than sixty days after the first vote thereon; but no measure is to be resubmitted unless it has received more than one-third of the votes given for and against both. An initiative measure enacted by the legislature with-

out change is not to be referred unless a popular vote is demanded by a referendum petition. The veto power of the governor does not extend to any measure approved by vote of the people. and if he vetoes any measure initiated by the people and passed by the legislature without change, and his veto is sustained by the legislature, the measure is to referred to the people at the next general election.

The legislature may enact measures expressly conditioned upon the people's ratification by referendum vote.

Petitions for a reference of any act or any part or parts thereof, passed by the legislature must be signed by not less than 10,000 electors, and be filed within ninety days after the recess of the legislature. The governor is required to give notice of the suspension of acts through referendum petitions and make proclamation of the time when the referred measure is to be voted upon. Referred measures do not take effect until thirty days after the governor has announced their ratification by a majority of the electors voting thereon. The governor may order a special election upon an initiative or referendum measure, or if so requested in the petition shall order a special election held upon the act to be referred or the act initiated but not enacted without change by the legislature.

Michigan. Const. 1908, art. 5, sec. 38 and art. 17, secs. 2, 3. Any bill passed by the legislature and approved by the governor, except appropriation bills, may be referred by the legislature to the electors; and no bill so referred shall become law unless approved by a majority of the electors voting thereon.

Amendments to the constitution may be proposed by petition signed by over 20% of the total number of electors voting for secretary of state at the preceding election of such officer. All petitions must contain the full text of the proposed amendment, together with any existing provisions of the constitution which would be altered or abrogated thereby. Such petitions must be signed at the regular registration or election places at a regular registration or election under the supervision of the officials thereof, who must verify the genuineness of the signatures and certify the fact that the signers are registered electors of the respective townships and cities in which they reside, and must forthwith forward the petitions to the secretary of state. All such petitions must then be certified by the secretary of state to the legislature at the opening of its next regular session; and when the petitions for any one proposed amendment are signed by not less than the required number of petitioners, he must also submit the proposed amendment to the electors at the first regular election thereafter, unless the legislature in joint convention disapproves of the proposed amendment by a majority of the members elected. The legislature may, by a like vote, submit an alternative or a substitute proposal on the same subject. No amendment to this section may be proposed in the manner prescribed.

If a majority of the electors voting upon the proposed amendment ratify and approve it, the same shall become a part of the constitution, provided that the affirmative vote be not less than one-third of the highest number of votes cast at the said election for any office.

In case alternatives proposed on the same subject are submitted at the same election, the vote shall be for one of such alternatives or against such proposed amendments as a whole. If the affirmative vote for one proposed amendment is the required majority of all the votes cast for and against such proposed amendments, it shall become a part of the constitution. If the total affirmative vote for such alternative proposed amendments is the required majority of all the votes for and against them, but no one proposed amendment receives such majority, then the proposed amendment which receives the largest number of affirmative votes shall be submitted at the next regular election. If it then receives the required majority of all the votes cast thereon, it shall become a part of the constitution. The legislature is directed to enact appropriate laws to carry out the provisions of this section.

Missouri. (Amend. 1908.) art. 4, sec. 57. The initiative and referendum apply to both statutory law and constitutional amendments. Initiative petitions require not more than 8% of the legal voters in each of at least two-thirds of the congressional districts in the state. Every petition must include the full text of the measure proposed, and must be filed with the secretary of state not less than four months before the election at which it is to be voted upon.

The referendum may be ordered upon a petition signed by 5% of the legal voters in each of at least two-thirds of the congressional districts, or by the legislative assembly. Emergency measures are exempt from the

referendum. Laws making appropriations for the current expenses of the state government, for the maintenance of the state institutions, and for the support of public schools are also exempt. Referendum petitions must be filed not more than ninety days after the final adjournment of the legislative session. The veto power of the governor does not extend to measures referred to the people. All elections on measures referred to the people, shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any initiative or referendum petition shall be the basis on which the number of legal voters necessary to sign such petition shall be counted.

Rev. Stats., 1909, vol. 2, ch. 59, secs. 6747—56, (Laws, 1909, pp. 554—6). This chapter establishes the procedure to facilitate the operation of the initiative and referendum provisions of the constitution. It specifically provides for the form of initiative and referendum petitions; the verification of signatures; judicial proceedings; the duties of officials relating to petitions; the manner of voting on measures; what measure shall be paramount in case of conflict; the canvass and return of votes on measures, and for the proclamations on paramount measures; and the penalties for violation of this act.

The minimum number of petitioners to either an initiative or referendum petition, is 5 per cent of the legal voters in each of at least two-thirds of the congressional districts in the state.

Montana. Const. (Amend. 1906) art. 5, sec. 1. Direct legislation is established for statutory, but not for constitutional law. Certain specific exemptions are also made for statutory law. The referendum may not be invoked upon emergency measures.

Initiative petitions require 8 per cent of the legal voters of the state and 8 per cent of the legal voters in each of two-fifths of the whole number of counties of the state. They must include the full text of the measure proposed, and must be filed with the secretary of state not less than four months before the election at which they are to be voted upon.

Referendum petitions require 5 per cent of the voters of the state and 5 per cent of the voters of each of two-fifths of the counties; and they must be filed not less than six months after the final adjournment of the legislative session. The legislative assembly may also refer any act.

Any measure referred to the people is to remain in full force and effect unless the referendum petition is signed by 15 per cent of the legal voters of a majority of the whole number of the counties of the state, in which case the law remains inoperative until it is passed upon at an election and the result has been determined as provided by law. The veto power of the governor does not extend to measures referred to the people.

All elections on measures referred to the people shall be held at the biennial regular general election, except when the legislative assembly shall order a special election. The whole number of votes cast for governor at the regular election last preceding the filing of any pe-

tition for the initiative or referendum, shall be the basis on which the number of the legal petitions and orders for the initiative and referendum shall be filed.

Rev. Codes, 1907, vol. 1, part III, title 1, ch. II, art. X, secs. 106—115, (Laws 1907, ch. 62). This law establishes the procedure for carrying the direct legislation provisions of the constitution into effect. It definitely sets forth the requirements as to the form of petitions; the verification of signatures; the duties of officials in submitting petitions; the publication and distribution of arguments; the manner of conducting the elections and of canvassing the vote; and the proclamation of the governor declaring the enactment of the approved measures.

Provision is made for the official distribution of the text of measures to all the electors in the state. In addition, arguments for or against any proposed measures may be supplied at the expense of the parties interested; and such arguments when printed in pamphlet form of specified size and style, will be mailed by the state bound in with the official copy of the measure to each voter.

Parties filing initiative petitions may supply arguments for, and opposing parties may supply arguments against, the measures proposed. In case of measures referred to the people by the legislative assembly, any person may supply arguments for or against the referred measures; but the secretary of state is not obliged to receive any pamphlets for distribution unless a sufficient number is furnished to supply one to every legal voter in the state.

Nebraska. Const. (Amend. 1912) art. 3, secs. 1—1d, and 10. The initiative and referendum apply to laws and constitutional amendments.

Initiative petitions for laws must be signed by 10 per cent of the legal voters of the state, and for constitutional amendments by 15 per cent, so distributed as to include 5 per cent of the legal voters in each of two-fifth of the counties; and must contain the full text of the measure so proposed. Initiative petitions must be filed with the secretary of state and be by him submitted to the voters at the first regular state election held not less than four months after such filing. The same measure, either in form or essential substance, shall not be submitted to the people by initiative petition oftener than once in three years. If conflicting measures submitted to the people at the same election be approved, the one receiving the highest number of affirmative votes thereby becomes law as to all conflicting provisions.

Referendum petitions must be signed by 10 per cent of the legal voters of the state, distributed as required for initiative petitions. Referendum petitions must be filed with the secretary of state within ninety days after the close of the legislative session, or after an adjournment for a period of over ninety days. Elections thereon must be had at the first regular state election held not less than thirty days after such filing. The referendum may be ordered upon any act, except acts making appropriations for the expenses of the state government, and state institutions existing at the time such act is passed. When the referendum is ordered upon an act,

or any part thereof, it shall suspend its operation until the same is approved by the voters, provided that emergency acts shall continue in effect until rejected by the voters or repealed by the legislature. The filing of a referendum petition against one or more items, sections or part of an act does not delay the remainder of the measure from becoming operative.

The whole number of votes cast for governor at the regular election last preceding the filing of any initiative and referendum petition is made the basis on which the number of legal voters required to sign such petition shall be computed. The veto power of the governor does not extend to measures initiated by or referred to the people. All such measures become the law or a part of the constitution when approved by a majority of the votes cast thereon; provided, the vote cast in favor of said initiative measure or part of the constitution constitutes 35 per cent of the total vote cast at the election. Measures approved by the people take effect upon the governor's proclamation, which must be made within ten days of the completion of the official canvass. All propositions submitted under the above provisions must be submitted in a non-partisan manner and without any indication or suggestion on the ballot that they have been approved and endorsed by any political party or organization.

This amendment is self executing, but legislation may be enacted especially to facilitate its operation.

Nevada. Const. (Amends. 1904 and 1912) art. 19, secs. 1, 2 and 3. A referendum may be ordered on petition of 10 per cent of the voters. When a majority of

the electors voting at a state election by their votes signify approval of a law or resolution, such law or resolution stands as the law of the state, and cannot be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people. When such majority so signifies disapproval the measure is void and of no effect.

Statutes, 1908—9, ch. 188. This law provides the procedure for submitting acts of the legislature to a vote of the people in accordance with the referendum provisions of the constitution. Petitions must be filed with the secretary of state not less than four months before the general election. The act provides for the verification of signatures; the duty of officials in submitting the question; and the counting and canvassing of the votes cast thereon.

Statutes, 1911, pp. 446—7. The initiative and referendum power is reserved to the people, and applies to laws and constitutional amendments.

Initiative petitions require not more than 10% of the qualified electors and must be filed with the secretary of state not less than thirty days before any regular session of the legislature. The secretary of state transmits the same to the legislature as soon as it convenes and organizes. Such measures take precedence of all measures of the legislature except appropriation bills, and must be enacted or rejected without change or amendment within forty days. If it is enacted by the legislature and approved by the governor it becomes a law, but it is subject to referendum petition.

If it is rejected by the legislature, or if no action is taken thereon within forty days, the secretary of state must submit the same to the voters for approval or rejection at the next general election; and if a majority of the votes cast thereon approve of it, it becomes a law and takes effect from the date of the official declaration of the vote. An initiative measure so approved by the voters can not be annulled, set aside or repealed by the legislature within three years.

If the legislature rejects an initiative measure, it may, with the approval of the governor, propose a different measure on the same subject, in which event both measures must be submitted to the voters at the next general election. If the conflicting measures submitted shall both be approved by a majority of the votes severally cast for and against each of them, the measure receiving the higher number of affirmative votes thereupon becomes a law as to all conflicting provisions.

The whole number of votes cast for justice of the supreme court, at the general election last preceding the filing of any initiative petition is made the basis on which the number of qualified electors required to sign such petition shall be counted.

The referendum power is further reserved to apply to any item, section or part of any act or measure passed by the legislature.

The provisions of this section are self-executing, but legislation may be especially enacted to facilitate its operation.

New Mexico. Const. 1912, art. 4, sec. 1. Referendum only is provided for and it is subject to the following

restrictions. Petitions disapproving any law, (except a general appropriation law, laws providing for the preservation of the public peace, health or safety, or for the payment of the public debt or interest thereon, or the creation or funding of the same, except as in the constitution otherwise provided; and laws for the maintenance of the public schools or state institutions, and local or special laws) must be signed by not less than 10% of the qualified electors of each of three-fourths of the counties, and in the aggregate not less than 10% of the qualified electors of the state, as shown by the total number of votes cast at the last preceding general election.

Petitions must be filed with the secretary of state not less than four months prior to the general election next following the legislative session. If, on the referendum vote, a majority of the legal votes cast thereon, and not less than 40% of the total number of legal votes cast at such general election, are cast for the rejection of the law, it is annulled and repealed with the same effect as if the legislature had repealed it; and the repeal revives any law repealed by the act so annulled.

If the petition is signed by not less than 25% of the qualified electors, as above, and is filed not less than ninety days after the adjournment of the session of the legislature enacting the law, the operation of that law is thereupon suspended and the question of its approval or rejection is likewise submitted to a vote. The same vote as above is necessary to defeat the measure upon which the referendum is demanded.

North Dakota. (Proposed Const. Amends.) Laws, 1911, chs. 86, 89, 93 and 94. In 1907 the legislature of North Dakota passed a constitutional amendment providing for the initiative and referendum, but as it was not adopted by the 1909 session, in accordance with the requirements of the constitution of that state, it was not submitted to the people. At the 1911 session of the legislature four different initiative and referendum amendments were passed and referred to the 1913 session for adoption or rejection. Any of these amendments so adopted will be referred to the people in the 1914 election.

Chapter 93, Laws of N. D., 1911, applies only to laws; chapter 89, only to constitutional amendments, and chapters 86 and 94 apply to both laws and amendments.

Ohio. Const. (Amend., 1912) art. 2, secs. 1—1g. The initiative and referendum powers apply both to statutes and to constitutional amendments.

Initiative petitions for amendments to the constitution must be signed by 10 per cent of the voters of the state, of which number each of one-half of the counties must furnish as signers 5 per cent of its voters. When a petition so signed shall have been filed with the secretary of state and verified, he shall submit the amendment so proposed to the voters at the next regular or general election occurring subsequent to 90 days after the filing of the petition.

Initiative petitions for laws must be filed with the secretary of state not less than ten days prior to the commencement of any session of the legislature, and signed by 3 per cent of the voters, each of one half the counties

furnishing as signers 1½ percent of its voters; and must be verified as provided for below. The secretary of state must transmit the petitions to the legislature as soon as it convenes and organizes. If the said proposed law be passed by the legislature, either as petitioned for or in an amended form, it shall be subject to the referendum. If it be not passed or if it be passed in an amended form, or if no action be taken upon it within four months from the time it is received by the legislature, it shall be submitted to the electors at the next regular or general election, if such submission be demanded by supplementary petition signed by an additional 3 per cent of the voters, of which number each of one-half of the counties must furnish as signers 1½ per cent of its voters. Such supplementary petition must be filed with the secretary of state within 90 days after the proposed law has been rejected by the legislature or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the legislature shall have been filed by the governor in the office of the secretary of state. The proposed law must be submitted in the form demanded by the supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches of the legislature. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect in lieu of any amended form of said law which may have been passed by the legislature, and such amended law passed by the legislature shall not go into effect until and

unless the law proposed by supplementary petition shall have been rejected by the electors. Ballots must be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors, if approved by a majority of the electors voting thereon, takes effect 30 days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed constitutional amendments are approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

The referendum may be invoked upon any law, section of any law or any item in any law appropriating money passed by the legislature, except laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety. Emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the legislature, and the reasons for such necessity must be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. Except as above provided the referendum may be invoked upon

any law, section of any law or any item in any law appropriating money passed by the legislature. No law passed by the legislature, except as above provided, goes into effect until 90 days after it has been filed by the governor in the office of the secretary of state. When a referendum petition, signed by 6 per cent of the electors of the state and verified, has been filed with the secretary of state within 90 days after the filing of any law by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state must submit such law, section or item, at the next succeeding regular or general election occurring subsequent to 60 days after the filing of such petition; and no such law, section or item shall go into effect until and unless approved by a majority of those voting thereon. If, however, a referendum petition be filed against a section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

It is specifically provided that the initiative and referendum powers shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon, or to personal property.

Initiative, supplementary or referendum petitions may be presented in separate parts but each part must

contain a full and correct copy of the title and text of the law or part thereof sought to be referred, or the proposed law or constitutional amendment initiated. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality must state the township and county in which he resides, and a resident of a municipality must state in addition to the name of such municipality the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions must be written in ink, each signer for himself. To each part of such petition must be attached the affidavit of the person soliciting the signatures to the same, which affidavit must contain a statement of the number of the signers of such part of such petition and must state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than 40 days before the election it shall be otherwise proved; and in such event ten additional days shall be allowed for the filing of additional signatures to such petitions.

It is specifically provided that no law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency.

A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the legislature, if in session, and if not in session by the governor. The secretary of state must cause to be printed the law, or proposed law, or proposed constitutional amendment, together with the arguments and explanations, not exceeding 300 words for each, and also the arguments and explanations, not exceeding 300 words against each, and

must mail, or otherwise distribute, a copy of such measure or proposed measure, together with such arguments and explanations to each of the electors or the state, as far as may be reasonably possible. The secretary of state must cause to be placed upon the ballots the titles of measures submitted to the people. The ballot must be so printed as to permit an affirmative or negative vote upon each measure submitted. The basis upon which the required number of petitioners in any case shall be determined is the total number of votes cast for governor at the last preceding election.

The provisions of this amendment are self-executing, except as otherwise stated. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

Oklahoma. Const. 1907, art. 5, secs. 1—4, 6—8, and art. 24, sec. 3. The initiative and referendum apply to constitutional and statutory law. Emergency measures are exempt from the referendum provisions.

Legislative measures may be proposed by 8%, and amendments to the constitution by 15%, of the legal voters. Initiative petitions must contain the full text of the measure proposed. A referendum may be ordered by 5% of the legal voters, or by the legislature. The percentage of legal voters required for initiative and referendum petitions is based upon the total number of votes cast at the last general election for the state office receiving the highest number of votes. Petitions for referred measures must be filed not more than ninety days

after the final adjournment of the legislature. Petitions and orders for the initiative and referendum must be filed with the secretary of state and be addressed to the governor, who must submit them to the people.

All elections on measures referred to the people are held at the regular state elections, except when the legislature or the governor orders a special election for the express purpose of making such reference.

Initiative measures require a majority of the votes cast at the election, while only a majority of the votes cast on a referred measure are necessary to give it effect. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislature. The veto power of the governor does not extend to measures voted on by the people. Any measure rejected by the people, through the powers of the initiative and referendum, can not be again proposed by the initiative within three years thereafter by less than 25% of the legal voters.

The explicit statement is also inserted that "the reservation of the powers of initiative and referendum shall not deprive the legislature of the right to repeal any law, or propose or pass any measure which may be consistent with the constitution of the state and the constitution of the United States."

In the light of the experience of older states that have adopted direct legislation in state affairs, this statement seems superfluous. The provisions of the state constitutions which reserve direct legislative power to the people do not contemplate the restriction of initiative power in the legislature; the power constitutionally delegated to representatives to initiate measures or to repeal laws still remains. The people merely reserve the right to propose measures and to enact or reject

the same independent of the legislative assembly. For a discussion of this point, see Kadderly v. Portland, 44 Or. 118 (1903), and Kiernan v. Portland, (Supreme Court of Ore.) 112 Pac. 402 (Dec. 31, 1910.)

The initiative and referendum provisions of the Oklahoma Constitution were held valid, but not self-executing, by the Supreme Court of that state in Ex parte Wagner, 21 Okla. 33 (1908).

Comp. Laws, 1909, ch. 51, pp. 869—75, as amended by ch. 66, Laws, 1910, pp. 121—7 and by ch. 107, Session Laws, 1910—11, pp. 235—7. These acts carry into effect the initiative and referendum powers of the above constitutional provisions. They prescribe the forms of initiative and referendum petitions and provide for the verification of signatures. Provisions are made for judicial proceeidngs; the wording of the ballot; title of the measure; proclamation of the governor giving the substance of the measure and the date of the referendum vote thereon; the publication and distribution to all the voters of the state of a pamphlet containing the text of the measures to be voted upon and arguments for and against the same; resubmission for a measure receiving the greatest number of votes, if it has received more than one-third of the votes cast for and against both bills, in the case of competing measures both of which were defeated; the canvass and return of votes and proclamation by the governor declaring the result of the vote; and penalties for violation of this act.

The procedure prescribed is not mandatory, but if substantially followed is sufficient.

The publication and distribution of the text of proposed measures and of arguments favoring or opposing them as follows: Arguments shall be prepared for and

against each measure to be submitted to a vote of the people of the state, the length of arguments not to exceed 2,000 words for each side, of which one-fourth may be in answer to opponents' arguments. For one side the arguments shall be prepared by a joint committee of the house and senate, and for the other by a committee representing the petitioners. When the legislature submits a competing bill the argument against it is prepared by the committee that prepared the affirmative for the opposing bill. Where the legislature submits any other question the argument for the negative is prepared by a committee representing the members in the legislature who voted against the substance of the measure. The first part of each argument must be completed not later than two weeks after the governor's announcement of the submission of the measure. Twenty-five copies must be filed with the secretary of state who must at once deliver twenty-three copies to the chairman of the opposing committee. Each committee must file its answer within two weeks. In no case, however, shall the time be so great as to bring the completion of the argument nearer than 100 days before any regular election, or 40 days before any special election, at which the measure is to be voted upon. When the time for preparing the arguments is less than four weeks, it is divided equally between the two parties.

Before the primary election held prior to the general election, the secretary of state must forward to the county clerk pamphlets containing copies of the measures, arguments, official ballot, (and a table of contents) in sufficient numbers to supply all the voters in all the

counties of the state and an additional number equal to ten per cent of such number of voters. At the time of furnishing the primary election supplies, each county clerk must furnish each election inspector his quota for each precinct wherein a primary is to be held, and it is made the duty of the inspector to furnish every voter a copy of the pamphlet on the day of the primary election. All copies remaining must be preserved by the inspector and be by him distributed to electors who are unsupplied with same. Provision is also made for the distribution of pamphlets before a special referendum election.

When a citizen desires to circulate an initiative or referendum petition, such citizen must, before the petition is circulated or signed by electors, file a copy of the same in the office of the secretary of state, and within ninety days after the date of such filing, the original petition must be filed. No petition not filed in accordance with this provision can be considered. When the original petition is filed with the secretary of state, it shall be his duty forthwith to cause to be published in at least one newspaper, a notice setting forth the date of such filing Within ten days any citizen by written notice to the secretary of state and of the parties who filed the petition, may protest against the same, at which time the secretary of state will hear testimony and argument for and against the sufficiency of such petition. He must decide whether the petition is in form as required by the statutes, and his decision is subject to appeal to the State Supreme Court.

If the legislature should desire to ascertain the sentiment of the people upon any proposed amendment to the constitution, it may, by concurrent resolution, suggest to the citizens of the state such proposition as an amendment to the constitution. Such resolution must set forth the proposed amendment in full, and should the citizens of the state proceed to initiate such proposition within one year thereafter, then it shall be the duty of the proper officials to submit the question to the people. Electors desiring to vote for an amendment submitted in this manner, and which was first suggested by concurrent resolution of the legislature, must leave the words "For the amendment," intact without erasing the same. Should he desire to vote against the amendment he must strike out the words, "For the amendment," with a pencil mark. When such words are so erased after any proposition, the ballot must be recorded as having been cast against the same, and whenever they are not so erased, such ballot must be recorded as having been voted for such proposition.

In connection with this last provision, see the article by L. J. Abbott, Twentieth Century Magazine, Nov. 1911, vol. 5, no. 1, pp. 38–40.

Oregon. Const. (Amend. 1902 and Amend. 1906) art. 4, secs. 1 and 1a. The initiative and referendum apply to statutory law and constitutional amendments.

Not more than 8% of the legal voters shall be required to propose any measure by initiative petition. Every such petition must include the full text of the measure proposed. Initiative petitions must be filed with the secretary of state not less than four months before the election at which they are to be voted upon.

Referendum petitions against any act or items, sections or parts of any act of the legislative assembly (except as to laws necessary for the immediate preservation of the public peace, health or safety) must be signed by 5% of the legal voters, and be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislature which passed the bill. The legislative assembly may order a referendum on any act. The veto power of the governor does not

All elections on measures referred to the people are had at the biennial regular general elections, except when the legislature orders a special election. Any measure referred to the people takes effect and becomes the law when it has been approved by a majority of the votes cast thereon.

The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum is the basis on which the number of legal voters necessary to sign such petition must be counted.

"The initiative and referendum amendment does not abolish or destroy the republican form of government or substitute another in its place. The representative character of the government still remains. The people have simply reserved to themselves a larger share of legislative power. * * *

"Under this amendment, it is true, the people may exercise a legislative power, and may, in effect, veto bills passed and approved by the legislature and the governor; but the legislative and executive departments are not destroyed * * * Laws proposed and enacted by the people under the initiative laws of the amendment are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the legislature at will." Kadderly v. Portland, 44 Or. 118 (1903). See also, State v. Pacific States Telephone and Telegraph Company, 53 Or. 162 (1909); and same case, 32 Sup. Ct. Rep., 224 (1912).

And further see the exhaustive discussion of the subject in Kiernan v. Portland, 57 Or. 454 (1910). In delivering its opinion the court said: "It seems inconceivable that a state, merely because it may evolve a system by which its citizens become a branch of its legislative department, co-ordinate with their representatives in the legislature, loses caste as a republic."

Laws, 1907, ch. 226. This act facilitates the operation of the initiative and referendum powers reserved by the people, regulates elections thereunder, and provides penalties for violations. The law definitely prescribes the forms of initiative and referendum petitions; the manner of verifying signatures; the duties of officials in submitting measures; the method of canvassing and making returns; and the declaration of the enactment of approved measures. If two or more conflicting laws are aproved by the people at the same election, the law receiving the greatest number of affirmative votes is paramount in all particulars as to which there is a conflict, even though it may not have received the greatest majority of affirmative votes. Similarly, in the case of conflicting constitutional amendments approved by the people at the same election.

The following definite provision is made for the publication and distribution of the text of proposed measures and for arguments advocating or opposing the questions submitted: Before any election at which any proposed law or amendment to the constitution is to be submitted to the people, the secretary of state is required to have printed in pamphlet form the text of each measure to be submitted, together with the title as it will appear on the official ballot. The person, committee or authorized officers of any organization

filing an initiative petition has the right to file any argument advocating such measures. Any person, committee or organization may file any arguments they may desire, opposing such measures. Similarly, arguments advocating or opposing any measures referred to the people by the legislature, or by referendum petition, may be filed by any person, committee or organization. The parties offering arguments for distribution must pay all the expenses for paper and printing to supply one copy with every copy of the measure to be printed by the state. The cost of printing, binding, and distributing the measures proposed, and of binding and distributing the arguments, are to be paid by the state as a part of the state printing. Within a specified time before any election at which measures are to be voted upon, the secretary of state is required to transmit copies of each measure together with the arguments submitted, to the voters within the state.

See Stevens v. Benson, 50 Or. 269 (1907); Palmer v. Benson, 50 Or. 277 (1907); and Haines v. City of Forest Grove, 54 Or. 443 (1909).

South Dakota. Const. (Amend., 1898) art. 3, sec. 1. Under this amendment the people expressly reserve the right to propose measures, which the legislature is required to enact and to submit to a vote of the electors. They also reserve the right to require a referendum on any law which the legislature may have enacted, except laws for the immediate preservation of the public peace, health or safety, and laws for the support of the state government and the existing public institutions.

Not more than 5% of the qualified voters are required to invoke either the initiative or the referendum. The total vote cast for governor at the last preceding general election shall be the basis upon which the 5% of the electors shall be determined.

Comp. Laws., 1908, vol. 1, Pol. Code, secs. 21—28. Initiative petitions must contain the substance of the law desired. Referendum petitions must describe the law to be submitted by setting forth the title together with the date of passage and approval; and such petitions must be filed within ninety days after the adjournment of the legislature. Initiative or referendum measures approved by a majority of the votes cast thereon become law and are to be in force immediately after the result has been officially determined. The veto power of the executive shall not be exercised as to measures referred to a vote of the people. Petitions shall be liberally construed so that the real intention of the petitioners may not be defeated by mere technicality. (Laws, 1899, ch. 93, as amended by ch. 166, Laws, 1907, and ch. 43, Laws, 1909).

The legislature having declared that an act is an emergency measure, such determination is final, and is conclusive upon the courts. See State ex rel. Lavin et al. v. Bacon et al., 14 S. D. 394 (1901).

Texas. Laws, 1905, First called session, ch. 11, sec. 140. Under the primary election law, 10% of the voters in any political party may propose policies and secure a direct party vote thereon. Petitions are to be filed with the chairman of the county or precinct executive committee at least five days before the tickets

are to be printed and the chairman may require a sworn statement that the names of the applicants are genuine.

The number of signatures required for a petition is to be based upon the votes cast for the party nominee for governor at the preceding election. It is the duty of the chairman to submit any proposition for which a petition is filed, and the delegates selected at that time are to be "considered instructed for whichever proposition for which a majority of the votes are cast."

Utah. Const. (Amend., 1900), art. 6, secs. 1 and 22. This amendment provides for direct legislation, but the amendment is not self-executing, and six successive legislatures have refused to put it in force.

Washington. Const. (Amend., 1912) are. 2, sec. 1. This amendment provides for the initiative and referendum upon statutory law only. It does not apply to constitutional amendments.

Ten per cent, but in no case more than 50,000 of the legal voters shall be required to propose any measure by initiative petition, and every such petition must include the full text of the measure so proposed. Initiative petitions must be filed with the secretary of state not less than four months before the election at which they are to be voted on, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, they shall be submitted to the people at said election. If such petitions are filed not

less than ten days before any regular session of the legislature, they shall be transmitted to the legislature as soon as it convenes and organizes. Initiative measures take precedence over all other measures in the legislature except appropriation bills, and must be either enacted or rejected without change or amendment before the end of the regular session. If any such initiative measure is enacted by the legislature, it shall be subject to referendum petition, or it may be enacted or referred by the legislature to the people at the next regular election. If it is rejected by the legislature, or if no action upon it is taken by that body, the secretary of state must submit it to the people at the next regular general election.

The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject; and in such event, both measures must be submitted to the people. When conflicting measures are submitted to the people, the ballots must be so printed that a voter can express separately two preferences: viz., first as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue is law.

The referendum may be ordered on any act, bill, law, or any part thereof, passed by the legislature, except such laws as are necessary for the immediate preservation of the public peace, health or safety or support of the state government and its existing public institutions, by 6% of the legal voters; but in no case shall more than 30,000 signers be required. The legis-

lature may order a referendum on any act. No act, law or bill subject to referendum takes effect until ninety days after the adjournment of the session at which it was enacted. No act, law or bill approved by the people can be amended or repealed by the legislature within a period of two years following such enactment, and during that time may only be repealed or amended by direct popular vote.

Referendum petitions must be filed with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure. The veto power of the governor does not extend to measures initiated by or referred to the people. All elections on measures referred to the people are had at the biennial regular elections, except when the legislature orders a special election.

Any measure initiated by, or referred to, the people takes effect and becomes the law if it is approved by a majority of the votes cast thereon, provided the vote cast upon such question or measure equals one-third of the total votes cast at such election. Measures approved by the people are in operation on and after the thirtieth day after the election. The whole number of electors who voted for governor at the regular gubernatorial election last preceding the filing of any petition for the initiative or for the referendum is the basis on which the number of legal voters necessary to sign such petition are counted.

This amendment is self-executing, but legislation may be enacted especially to facilitate its operation. The legislature is directed to provide methods of publicity upon all laws or parts of laws, and amendments

to the constitution referred to the people, with arguments for and against the same, so that each voter of the state may receive the publication at least fifty days before the election at which they are to be voted upon.

Wisconsin. (Proposed Const. Amend.) Laws, 1911, pp. 1142—5. This amendment must be repassed by the Legislature of 1913 before being submitted to the vote of the people. Any senator or member of the assembly may introduce in the house of which he is a member, at any time during any session of the legislature, any bill or any amendment to any such bill or any proposed amendment to the constitution or any amendment to any such proposed constitutional amendment; provided that the time for so introducing such measures may by rule be limited to not less than thirty legislative days. The chief clerk must make a record of such proposed measure and any amendment thereto, and have the same printed.

Any law or constitutional amendment so introduced in the legislature, and consisting of a bill or constitutional amendment which has been introduced in the legislature during the first legislative thirty days of the session, or, at the option of the petitioners, incorporating in itself any amendment or amendments introduced in the legislature, may be submitted to the voters by initiative petition. Initiative petitions for laws must recite the full text of the measure proposed, must be filed with the secretary of state not later than four months before the next general election, and must be signed by 8% of the qualified electors, of whom not more than one-half shall be residents of any one

county. Initiative petitions for constitutional amendments must be signed by 10% of the qualified electors, of whom not more than one-half shall be residents of any one county. Amendments to the constitution which have been regularly agreed to by a majority of the members elected to each of the two houses of the legislature, may be submitted to the people upon petition signed by 5% of the qualified electors, of whom not more than one-half shall be residents of any one county. The number of signatures required upon any petition shall be calculated upon the total number of votes cast for governor at the last preceding election.

Laws and amendments to the constitution so proposed by initiative petition and submitted to the voters, become law if approved by a majority of the electors voting thereon. Laws so adopted take effect from and after thirty days after the election at which they were approved; and constitutional amendments, from and after the election at which adopted.

No law enacted by the legislature, except an emergency law, takes effect before ninety days after its passage and publication. If within the said ninety days there is filed a petition signed by 8% of the qualified electors of the state, of whom not more than one-half are residents of any one county, to submit to a vote of the people such law or any part thereof, such law or such part thereof does not take effect until thirty days after its approval by a majority of the qualified electors voting thereon. An emergency law remains in force, notwithstanding a referendum petition, but stands repealed thirty days after being re-

jected by a majority of the qualified electors voting thereon.

An emergency law is defined as "any law declared by the legislature to be necessary for any immediate purpose by a two-thirds vote of the members of each house voting thereon, entered on their journals by the yeas and nays."

No law making any appropriation for maintaining the state government or maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, is subject to rejection or repeal under this section. The increase in any such appropriation only shall take effect as in case of other laws, and such increase, or any part thereof, specified in the petition may be referred to a vote of the people upon petition.

If measures which conflict with each other in any of their essential provisions are submitted at the same election, only the measure receiving the highest number of votes stands adopted by the people.

The vote for measures referred to the people must be taken at the next general election occurring not less than four months after the filing of the petition, and held generally throughout the state pursuant to law or specially called by the governor.

Except that measures specifically affecting a subdivision of the state may be submitted to the people of that subdivision, the legislature may submit measures to the people only as required by the constitution. The legislature is directed to provide for furnishing electors the texts of all measures to be voted upon by the people.

SUMMARY.

The leading provisions relating to the state-wide initiative and referendum may be summarized under five main headings, as follows: (I) the scope of the initiative and referendum, (II) procedure for initiative petitions, (III) procedure for referendum, (IV) enactment of referred measures, and (V) penalties.

I. Scope of the State-Wide Initiative and Referendum

In the United States the initiative and referendum have been applied to constitutional and statutory law; they have also been employed to obtain expressions of public opinion on state affairs, and to secure instructions as to party policy within political parties.

Constitutional Law.

The constitutional amendments for the initiative and referendum in state affairs apply generally to constitutional law.

Exceptions. Some of the states exempt constitutional amendments from the operation of the initiative.

See Mont. Const. (Amend. 1906), art. 5, sec. 1; Me. (Amend. 1908) Resolves, 1907, ch. 121, pp. 1476–1481; Wash. Const. (Amend. 1912), art 2, sec. 1; Idaho Const. (Amend. 1912) art. 3, sec. 1.

Statutory law.

As regards statutory law, some of the amendments provide for specific exceptions as to the use of the referendum, and nearly all provide for emergency measures.

Exceptions. The specific exceptions generally relate to appropriations for the current expenses of the state government, for the maintenance of the state institutions, and for the support of the public schools.

Acts calling elections are not subject to the referendum in Calif. Acts providing for tax levies are likewise excepted in Calif., and in Ohio.

Laws providing for the current expenses of the state government and state institutions can not be subjected to referendum vote in Ariz., Calif., Mo. or Ohio. See also, Colo. and Me. Appropriation laws, generally, were excepted in the Mont. and New Mex. provisions. Laws making appropriations for the expenses of the state government and existing state institutions are excepted from the referendum in Neb., S. D. and Wash. Laws making appropriations for the support of public schools are similarly excepted in Mo. and New Mex.

The proposed Wis. amendment provides that no law making any appropriation for maintaining the state government or maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to the referendum. The increase only in any such appropriation, or any part of such increase specified in the referendum petition, may be referred to a vote of the people.

Emergency measures. Laws necessary for the immediate preservation of the public peace, health, or safety, are generally exempt from the operation of the referendum.

See Ariz. Const. 1912, art. 4, part 1, sec. 1, par. 3; Ark. (Amend. 1910), Acts, 1909, pp. 1238–40; Calif. (Amend. 1911), art. 4, sec. 1; Colo. (Amend. 1910), art. 5, sec. 1; Me. (Amend. 1908), Resolves, 1907, ch. 121, pp. 1476–81; Mo. (Amend.

1908), art. 4, sec. 57; Mont. Const., (Amend. 1906) art. 5, sec. 1; Neb. Const. (Amend. 1912), art. 3, sec. 1 C; New Mex. Const., 1912, art. 4, sec. 1; Ohio Const. (Amend. 1912), art. 2, sec. 1d; Ore. Const. (Amend. 1902) art. 4, sec. 1; S. D. Const. (Amend. 1898) art. 3, sec. 1; Wash. Const. (Amend. 1912) art. 2, sec. 1b; and Wis. (Proposed Const. Amend.) Laws, 1911, pp. 1142–5.

A safeguard against the undue use of emergency measures is provided in some instances by requiring a declaration of the emergency and a two-thirds vote of all the members elected to each house, for the passage of such bills.

See the provisions of the Ariz., Calif., Me. and Ohio amendments.

For the passage of an "emergency" law the proposed Wis. amendment requires in each house a two-thirds vote of the members voting on such law, entered on the journals by the yeas and nays.

An additional safeguard against the abuse of the emergency clause by the legislature is attempted in one amendment by an enumeration of laws which may not be enacted as emergency measures.

Thus the Maine amendment provides that an emergency bill shall not include, (1) an infringement of the right of home rule for municipalities; (2) a franchise or a license to a corporation or an individual to extend longer than one year; or (3) provision for the sale or purchase or renting for more than five years of real estate.

The courts have uniformly held that the question as to whether a law is necessary for the immediate preservation of the public peace, health, or safety, is for the legislature to decide and is not subject to judicial review.

See State v. Bacon, 14 S. D. 394 (1901); and Kadderly v. Portland, 44 Ore. 118, 146–51 (1903).

The proposed Wis. amendment provides that "An emergency law shall be any law declared by the legislature to be necessary for any immediate purpose by a two-thirds vote of the members of each house voting thereon, entered on their journals by the yeas and nays."

Public opinion laws.

Public opinion system. Under public opinion acts pressure may be brought to bear upon legislators in the enactment of laws.

See Ill. Rev. Stats., 1906, ch. 46, secs. 428–9, p. 967. (Laws, 1901, p. 198.)

Party policy laws.

Advisory system within the parties. The use of the advisory system within the parties at primary elections enables the voters in any politicl party to propose policies and secure a direct party vote thereon.

See Tex. Laws, 1905, First called session, ch. 11, sec. 140.

II. Procedure for Initiative Measures.

The procedure for initiative measures varies somewhat widely in the several states. Differences exist in the requirements for petitions, the transmission of measures to the legislature and the people, the provisions for competing bills, and the methods used to secure publicity for the bills and amendments initiated.

Requirements for initiative petitions.

The percentage of voters required to sign petitions, he basis of the percentage, the verification of signa-

tures, and the method of filing petitions, vary considerably with different states.

Percentage of voters. In the states whose people possess the initiative power, the percentages of voters required to sign initiative petitions vary from 5 to 20 per cent.

Laws. The percentages for laws are as follows: Ark., Colo., Okla., and Ore., 8 per cent. South Dakota requires only 5 per cent. Calif. requires 5 per cent for the indirect, and 8 per cent for the direct initiative. Mo. requires 5 per cent of the voters in each of at least two-thirds of the congressional districts. Mont. requires 8 per cent, and provides that two-fifths of the counties must each furnish as signers 8 per cent of the legal voters of such county. Ariz. requires 10 per cent, and Me. the fixed number of 12,000 of the voters. The percentage provided in the Nev. amendment is 10 per cent. In Wash., the amendment requires 10 per cent, but not over 50,000 voters. The Neb. amendment requires 10 per cent, so distributed as to include 5 per cent of the voters in each of two-fifths of the counties. The proposed amendment in Wis. requires 8 per cent, of whom not more than one-half shall be residents of any one county. In Ohio it is provided that 3 per cent of the voters (one-half of the counties each furnishing as signers 1½ per cent of their electors) may by initiative petition submit a bill to the legislature. If the bill is not enacted without change by the legislature, or if unsatisfactory amendments are added, a supplementary petition signed by an additional 3 per cent of the voters is sufficient to require the placing of the measure on the ballot for submission directly to the people. In filing the supplementary petition the original measure may be petitioned for, or the original measure with any amendments adopted by either or both of the branches of the legislature.

Constitutional amendments. The percentage of legal voters required to sign initiative petitions to secure the submisson of constitutional amendments is 8 per cent in Ark., Calif., Colo., and Ore.; 5 per cent in each of at least two-thirds of the congressional districts in Mo.; and 15 per cent in Ariz. and Okla. The form of initiative in the Mich. constitution requires that the number of petitioners "exceed 20 per cent." The percentage of voters made necessary by the Nev. amendment is 10 per

cent. Ten per cent so distributed as to include 5 per cent of the voters in each of two-fifths of the counties, is the requirement of the Neb. amendment. The proposed amendment in Wis. requires 10 per cent, not more than one-half of whom shall be residents of any one county, and further provides that any amendment to the constitution agreed to by a majority of the members elected to each of the two houses of the legislature may be submitted to the people upon a petition signed by five per cent of the qualified electors, distributed as above. The Ohio amendment requires 10 per cent of the electors of the state, one-half of the counties furnishing as signers 5 per cent of their respective qualified voters.

Basis of percentage. The percentage required is uniformly based upon the vote cast at the last preceding general election.

In Ariz., Ark., Calif., Mont., Neb., Ohio, S. D., and Wash. (and in the proposed amendment of Wis.) the percentage is based upon the vote for governor; in Mo., Ore., and Nev. upon the vote for justice of the Supreme Court; and in Colo. and Mich., upon the vote for secretary of state. In New Mex., the basis is "the total number of votes cast at the last preceding general election;" and in Okla., the vote for the state office receiving the highest number of votes.

Verification of signatures. The methods for verifying signatures are definitely prescribed in the laws enacted to facilitate the operation of the several amendments.

See Ark., Public Acts, 1911, pp. 582–93; Calif. Const. Amend. 1911; Colo. Const. Amend. 1910; Mo. Rev. Stats., 1909, secs. 6747–56; Mont. Rev. Codes 1907, pp. 27–33; Okla. Comp. Laws, 1909, ch. 51, pp. 869–75; S. D. Pol. Code, 1908, pp. 8–10 Laws, 1907, ch. 62). See also, the Ohio amendment.

Filing. Provision is generally made that initiative petitions be filed with the secretary of state. The time for filing varies according to whether the petition is

first to be presented to the legislature, or is to be submitted directly to the people without being first presented to the legislative assembly.

Time. Petitions must be filed not less than four months before the election in Ariz., Ark., Colo., Mo., Mont., Neb., Ore. and Wash. See also, the proposed amendment in Wis. The time is not less than thirty days before any regular session in Me. In Calif. initiative measures petitioned for by 8 per cent of the voters are voted upon at the next regular election occurring subsequent to ninety days after the filing of the petition, or at any prior special election called by the governor. Initiative petitions signed by 5 per cent of the voters may be filed for transmission to the legislature at any time not less than ten days before any regular legislative session. Under the Wash. amendment petitions may be filed not less than four months before the election, or not less than ten days before any regular session of the legislature. The Ohio amendment provides for filing initiative laws not less than ten days prior to the commencement of any session of the general assembly.

Transmission of measures to legislature and people.

Some of the initiative amendments provide for compulsory, and some for optional transmission of measures to the legislature. The object sought to be secured by this arrangement is the affording of an opportunity for expert investigation, for public hearings, for testimony, for debate and for legislative consideration. Provisions are included which require an initiative measure which has been rejected by the legislature, or not acted upon by it, or changed by amendment, to be submitted directly to the people.

The Maine initiative amendment of 1908 provides that any measure initiated by the people and transmitted to the legislature unless enacted without change at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the legis-

lature, and in such manner that the people can choose between the competing measures or reject both. If the measure initiated is enacted by the legislature without change, it does not go to a referendum vote, unless so demanded in the petition.

Under the Calif. amendment, laws and constitutional amendments petitioned for by the initiative by 8 per cent of the voters, are submitted directly to the people; while laws initiated by petitions signed by 5 per cent of the voters are transmitted to the legislature, and must be either enacted or rejected without change or amendment, within forty days from the time received by the legislature. If such proposed law is enacted by the legislature it is subject to the referendum. If it is rejected, or not acted upon within forty days, the secretary of state must submit it to the people at the next general election. The legislature may reject any measure so initiated and propose a different one on the same subject; and in such event both measures must be submitted to the people.

The Nev. amendment provides that initiative measures be presented to the legislature, and that they take precedence over all measures of the legislature except appropriation bills. The further provisions of this amendment, relative to the enactment or rejection of initiative measures within forty days, and to possible competing measures, are the same as those of Calif.

Under the Wash. amendment, initiative measures may be submitted directly to the people or transmitted first to the legislature. Initiative petitions filed at least four months before the election are submitted directly to the people; those filed not less than ten days before a regular legislative session are presented to the legislature. Such an initiative measure takes precedence over all but appropriation bills in the legislature and must be either enacted or rejected without change before the end of the session. If enacted, it is subject to the referendum. If rejected or not acted upon, it must be submitted to the people. The legislature may reject an initiative measure and propose a different one on the same subject, both measures being submitted to the voters. This Wash. amendment, however, provides that when conflicting measures are so submitted to the people the ballots shall be so printed that a voter shall be asked to express separately two preferences; first, as between either measure and neither, and next, as between one and the other. If a majority of those voting on the first proposition is for neither, both fail; if a majority is for either, the measure receiving a majority of votes on the second preference vote is law. It has been urged in objection

to this form of submission that it does not clearly and adequately present the matter to the people, in that voters who favor one measure and oppose the competing one, because of features objectionable to them in the alternative measure may be forced upon the first preference question to vote for "Neither" measure, and so against both.

The initiative provision in the S. D. constitution provides that "the people expressly reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state."

Under the Ohio amendment, amendments to the constitution may be submitted directly to the voters upon initiative petitions signed by 10 per cent of the electors, one-half of the counties furnishing as signers 5 per cent of the voters of such counties. Laws may be initiated and presented to the legislature by petitions signed by 3 per cent of the voters (1½ per cent of those of each of one half of the counties signing such petition). If the legislature refuses to act, or if amendments are added, an additional 3 per cent of the electors may petition and have a vote upon the original form, or upon the original measure with any of the amendments adopted by either or both of the houses of the legislature.

The proposed amendment in Wis. provides that any bill or constitutional amendment which has been introduced by a member in the legislature during the first thirty legislative days, together with any amendment or amendments introduced in the legislature may be submitted by initiative petition to the people of the state for their approval or rejection. Initiative petitions for laws require 8 per cent of the voters, not more than one half of whom shall be residents of any one county, and petitions for constitutional amendments require 10 per cent, distributed as above. If measures which conflict with each other in any of their essential provisions are submitted at the same election, only the measure receiving the highest number of votes shall stand as the enactment of the people. Any proposed constitutional amendment agreed to by a majority of the members elected to each of the two houses of the legislature at one session, may be submitted to the voters by initiative petition signed by 5 per cent of the qualified electors (not more than one-half of whom shall be residents of any one county).

Provision for competing bills.

An important feature in initiative provisions in several states is that permitting the legislature to submit

a competing bill, if it disapproves of the initiative measure. This affords opportunity for legislative consideration of conflicting measures, and gives the people a choice between the initiated bill and the one submitted by the legislature.

Note the Me., Calif., Nev. and Wash. provisions. See also, Ohio, and the pending amendment in Wis. (All summarized briefly above.)

Competing bills must be submitted with initiative measures, so that the electors may vote upon each separately and choose between them, or reject both.

See Calif. (Amend. 1911); Me. (Amend. 1908); and Nev. (Amend. 1912). See brief summaries of the provisions of these (and the Ohio and Wash. amendments, and the proposed Wis. amendment), above.

The constitutions of a number of the states provide that if two or more conflicting measures or amendments to the constitution shall be approved by the people at the same election, the measure or amendment receiving the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

See Ariz. Const., art. 4, sec. 1, par. 12; Calif. Const., art. 4, sec. 1; Neb. Const., art. 3, sec. 1A; and Nev. Const., art. 19, sec. 3.

The proposed Wis. amendment provides that if measures which conflict with each other "in any of their essential provisions" are submitted at the same election, only the measure receiving the highest number of votes shall stand as the enactment of the people; and similarly as to conflicting constitutional amendments.

Publicity for measures.

Publicity is sought to be secured for bills and constitutional amendments submitted under the initiative and referendum powers of the several states, by a

number of different methods. Some of these provide simply for the publication of the texts of the measures to be voted upon; some, for the distribution of copies of the measures to the voters; and some, for the distribution of copies of the measures together with arguments thereon.

Publication of text of measure. Many of the states require the publication of the full text of initiative and referendum measures.

See the provisions of Ariz., Ark. and Colo. See also, Mich. and Nev.

Ariz., Ark. and Colo. require publication in at least one newspaper in each county where a newspaper is published. The required length of time of such publication in each state is as follows: Ariz., 90 days; Ark., 30 days; Colo., three months.

Distribution of copies of measures. The proposed Wisconsin amendments directs the legislature to provide for furnishing electors with the texts of all measures and constitutional amendments to be voted upon by the people.

Distribution of copies of measures and arguments thereon. The distribution of copies of the measures to be voted upon, together with the arguments thereon, is provided for in five states; viz., California, Montana, Ohio, Oklahoma and Oregon. The Wash. constitutional amendment (1912) directs the legislature of that state to make similar provisions.

The California amendment of 1911 requires that "until otherprovided by law," all measures submitted to the people be printed, and together with arguments for and against each such measure by the proponents and opponents thereof, be

mailed to each voter. "The persons to prepare and present such arguments shall, until otherwise provided by law, be selected by the presiding officer of the senate."

Montana (in its Rev. Codes, 1907, vol. 1, part 3, title 1, ch. 2, art 10, sec. 112) makes detailed provision for the printing of measures and the distribution of pamphlets for and against such measures. The secretary of state must cause to be printed in pamphlet form the texts of the measures. The persons, committees, or duly authorized officers of any organization filing any initiative petition have the right to place with the secretary of state for distribution pamphlets advocating such measures; and any person, committee or organization opposing any measure may similarly place for distribution pamphlets opposing it. Pamphlets advocating or opposing any measure referred to the people by the legislature may be placed with the secretary of state by any person, committee, or organization. All pamphlets containing arguments must be furnished to the secretary of state at the sole expense of the persons interested, and without cost to the state. Sufficient pamphlets must be furnished to supply one to every legal voter in the state. The secretary of state must bind in one copy of each of said argument pamphlets with his copy of the measures, and distribute to each county clerk a sufficient number to furnish one copy to each voter in his county. The county clerk is then required to mail to each registered voter a copy of the complete pamphlet.

The Ohio constitution, art. 2, sec. 1g (Amend. of 1912) provides that a copy of all laws or proposed laws or proposed constitutional amendments, together with an argument or explanation, or both, for, and an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument against any law, section or item, submitted to the electors by referendum petition, may be named in such petition, and the person or persons who prepare the argument for any proposed law or amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary initiative petition, shall be named by the general assembly, if in session, and if not in session, then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed constitutional amendment, together with the arguments and explanations not exceeding a total of 300 words for each, and the arguments and explanations not exceeding 300 words against each, and shall mail,

or otherwise distribute, a copy of such law, or proposed law, or proposed constitutional amendment, together with such arguments and explanations for and against the same "to each of the electors of the state, as far as may be reasonably possible."

Under the Oklahoma law, pamphlet copies of the measures to be voted upon, and arguments thereon, are printed and distributed to the people. Arguments are not to exceed 2,000 words for each side. One-fourth may be in answer to opponents' arguments. For one side the arguments shall be prepared by a joint committee of the House and the Senate and for the other by a committee representing the petitioners. Where the legislature submits a competing bill the arguments against it shall be prepared by the committee that prepared the affirmative of the opposing bill. In case the legislature submits any other question the negative argument shall be prepared by a committee representing the members in the legislature who voted against the substance of the measure. Provision is fade as to the time for filing arguments and replies. Before the primary election held prior to the general election at which a measure is to be submitted to the people, the secretary of state must forward to the county clerk of each county a sufficient number of copies of the texts of the measures, and pamphlet copies of the arguments and the ballot titles, to supply each and every voter in his county, and an additional number equal to 10 per cent of such number of votes. The county clerk at the time of furnishing the primary election supplies must furnish each election inspector his quota for each precinct, and the said inspector must furnish each and every voter on said primary election day a copy of the pamphlet. All copies of such pamphlets remaining after the primary election shall be preserved by the inspector and be by him distributed to electors who are unsupplied with them. Provisions are also made in the case of measures to be voted upon at special elections (See Okla. Laws, 1907-8, ch. 44, secs. 9-13.)

Under the Oregon law (Laws 1907, ch. 226, sec 8) not later than the first Monday of the third month before any regular general election, not later than 30 days before any special election, at which any proposed law or amendment to the constitution is to be voted upon, the secretary of state shall cause to be printed in pamphlet form a copy of the title and text of each measure to be submitted, with the number and form in which the ballot title thereof will be printed on the official ballot. The person, committee, or duly authorized of-

ficers of any organization filing an initiative petition, (but no other person or organization), shall have the right to file with the secretary of state for printing and publication any argument advocating such measure; said argument to be filed not later than the first Monday of the fourth month before the election. Any one may file any arguments they may desire, opposing any measure, not later than the fourth Monday of the fourth month immediately preceding the election. Arguments advocating or opposing any measure referred by the legislature, or by referendum petition, at a regular election, shall be governed by the same rules as to time, but may be filed by any person, committee or organization. In the case of measures submitted at a special election, all arguments in support of such measures must be filed at least 60 days before such election.

In every case the person or persons offering such arguments for printing and distribution shall pay to the secretary of state sufficient money to pay all expenses for paper and printing to supply one copy with every copy of the measure to be printed by the state. The secretary of state shall cause one copy of each of said arguments to be bound in the pamphlet copy of the measures, and all such measures and arguments to be submitted at one election shall be bound together in a single pamphlet. All printing shall be done by the state. The pages of the pamphlet are required to be six by nine inches in size, and the printed matter thereof set in 8-point Roman-faced type, single leaded, and 25 ems in width, with appropriate heads, and printed on sized and super-calendered paper 25 by 38 inches, weighing 50 pounds to the ream. The title page of every measure bound in the pamphlet must show its ballot title and ballot numbers, and the title page of each argument must show the measure or measures it favors or opposes and by what persons or organizations it is issued. The cost of printing, binding and distributing the measures proposed, and of binding and of distributing the arguments, shall be paid by the state as a part of the state printing; it being intended that only the cost of paper and printing the arguments shall be paid by the parties presenting the same. Not later than the fifty-fifth day before the regular general election at which such measures are to be voted upon, the secretary of state must transmit by mail, with postage fully prepaid, to every voter in the state whose address he may have, one copy of such pamphlet. In the case of a special election he must mail said pamphlet to every voter not less than twenty days before such special election.

The Wash. constitutional amendment (1912) art. 2, sec. 1 (d) directs the legislature to provide methods of publicity of all laws or parts of laws, and amendments to the constitution referred to the people, with arguments for and against the laws and amendments so referred, "so that each voter of the state shall receive the publication at least 50 days before the election at which they are to be voted upon."

III. PROCEDURE FOR REFERENDUM.

Measures may be referred either by petition or by legislative action.

Reference by petition.

The requirements for reference by petition vary both as to the percentage of voters required and the manner of filing petitions.

Percentage of Voters.

In the states having the referendum in force the required percentages range from 5% to 25%. The usual percentage is 5% of the legal voters of the state.

The percentages are 5 per cent in Ariz., Ark., Calif., Colo., Mont., Okla., Ore. and S. D., while Nev. requires 10%. The Mo. requirement is 5 per cent of the voters in each of at least two-thirds of the congressional districts, and Mont., requires that the referendum petition be signed by 5% of the voters of the state, provided that two-fifths of the counties each furnish as signers 5% of the legal voters in such county. Maine requires the fixed number of 10,000 signatures.

Mont. has a provision that any measure referred to the people is to remain in full force unless the petition is signed by 15 per cent of the legal voters of a majority of the whole number of counties of the state, in which case the law remains inoperative until it is passed upon at an election and the result is officially determined.

The Ohio amendment requires 6 per cent of the electors of the state (each of one-half of the counties furnishing as signers 3% of its voters); and the Wash. amendment requires 6 per cent, but in no case more than 30,000 of the voters. The

amendment proposed in Wis., requires 8 per cent. Under the New Mex. constitution referendum petitions must be signed by not less than 10 per cent of the qualified electors of each of three-fourths of the counties, and in the aggregate by not less than 10 per cent of the qualified electors of the state. Such a petition, however, does not suspend the operation of the law referred. In order to suspend the operation of an act, the petition must be signed by at least 25 per cent of the qualified voters under the foregoing conditions. The Neb. amendment makes necessary the signatures of ten per cent of the voters of the state so distributed as to include 5 per cent of the voters in each of two-fifths of the counties of the state.

Basis of percentage.

The basis of the required percentage is the same as for initiative petitions.

Filing.

Petitions are to be filed with the secretary of state within a specified time.

Time. Referendum petitions must be filed not later than ninety days after the close of the legislative session in Ariz., Ark., Colo., Mo., Okla., and Ore., and within ninety days after the session in Calif., Me., and S. D.; not later than six month after the session in Mont., and not less than four months before the general election in Nev. Referendum petitions signed by 10 per cent of the voters in New Mex. may be filed at any time after the legislative session not less than four months prior to the next general election. A petition signed by not less than 25 per cent of the voters, and intended to suspend the operation of the act referred, must be filed within ninety days after the final adjournment of the session. The Wash. amendment requires referendum petitions to be filed not later than ninety days after the legislative session enacting the act upon which the referendum is demanded; and the Neb. and Ohio amendments and the proposed Wis. amendment, within ninety days after the session.

Reference by legislative action.

Legislatures in many states are expressly authorized to enact measures conditioned upon their approval by the people, on a referendum vote.

Compare the constitutional provisions of Ariz., Ark., Colo., Me., Mich., Mo., Mont., Okla., Ore., and Wash.

Duty of officials.

In submittting initiative and referendum petitions to a vote of the people, the secretary of state and all other officers shall be guided by the general laws until legislation is especially provided.

Compare the provisions of Ark., Calif., Colo., Me., Mo., Mont., Ore., Neb., and Wash.

IV. ENACTMENT OF REFERRED MEASURES.

Elections for submission of measures.

Measures may be referred for enactment or rejection at general or at special elections.

General Elections. The S. D. statute, and the Colo. amendment and the Ariz. and New Mex. constitutions provide for the submission of measures at general elections only.

Special elections. Special elections may be ordered by the legislature in Ark., Mo., Mont., Ore., and Wash.; and by the legislature or governor in Okla. and Maine. (Under the Maine provision the governor must order a special election if so requested in the petition. In Calif., the governor may, in his discretion, call a special election. Special elections may also be called by the governor under the proposed Wis. amendment.

Veto power.

The veto power of the governor does not extend to measures referred to the people.

See Ariz., Ark., Calif., Colo., Me., Mo., Mont., Neb., Okla., Ore., S. D. and Wash.

The Maine amendment requires that if any measure initiated by the people and passed by the legislature without change, is vetoed by the governor, and his veto is sustained by the legislature, the measure must be referred to the people at the next general election.

When operative.

The amendments of the several states generally provide that any measure referred to a vote of the people becomes a law and is in force from the date of its approval by a majority of the votes cast thereon, or from the date of the official declaration that it has been so approved.

See Ariz., Ark., Colo., Mo., Mont., Nev., Ore., S. D. (statute).

In Calif., a measure approved by a majority of the votes cast thereon takes effect five days after the date of the official declaration of the vote by the secretary of state. The Maine amendment provides that any measure approved by a majority of the votes given thereon shall, unless a later date is specified in the measure, take effect thirty days after the proclamation of the governor giving the result of the vote.

In Okla., initiative measures must be approved by a majority of the votes cast at the election.

In Maine and Nev. provision is made that initiative measures enacted by the legislature without change, are not to be referred unless a referendum vote is demanded. In Me., when initiative and competing bills are submitted at the same election and neither receives a majority of the votes given for or against both, the one receiving the most votes is to be resubmitted by itself; but no measure is to be resubmitted unless it received more than one-third of the votes given for and against both.

Under the Nev. amendment, if conflicting maesures submitted at the same election are both approved by the majority severally cast for and against each, the one receiving the highest number of affirmative votes becomes a law as to all conflicting provisions.

The New Mex. referendum provision requires that in order to defeat a measure so referred there must be an adverse majority of the votes cast thereon, which negative vote must be not less than forty per cent of the total number of votes cast at the election.

The Wash. amendment provides that a measure submitted to the vote of the people becomes the law if approved by a majority of the votes cast thereon, if the total vote cast upon such measure equals one-third of the votes cast at the election.

The Neb. amendment requires the favorable vote of a maj

ority of those voting on a measure, provided the votes cast in favor of such measure constitute thirty-five per cent of the total vote cast at the election.

V. PENALTIES.

The laws enacted to facilitate the operation of the initiative and referendum amendments provide penalties for the unlawful signing of petitions.

In Me., Mont., Okla., Ore., and S. D., the unlawful signing of initiative or referendum petitions is punishable by fine, or by imprisonment or both, in the discretion of the court. In S. D. Comp. Laws, 1908, vol. 1, Pol. Code, secs. 21-28 (Laws, 1899, c. 93) the fine is not to exceed $500.00 nor the imprisonment five years. In Mo. (Rev. Stats., 1909, sec. 6755), Mont. Laws (1907, ch. 226, sec. 13) the fine is fixed at the same Ore. (Laws 1907, ch. 226, sec. 13) the fine is fixed at the same limit and the imprisonment in the penitentiary is not to exceed two years. In Ark. (Public Acts, 1911, p. 582) the punishment is made imprisonment in the penitentiary for not less than one year, nor more than five years.